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X. DISCIPLINE

1. Terminating Tenured Pedagogues.

Note, in all situations that could potentially result in physical harm to children you have the absolute discretion to immediately reassign a teacher or any employee for a reasonable period of time to duties not involving care and custody of children while you investigate.

Q: Can I terminate a tenured pedagogue?

A: You can commence termination proceedings pursuant to Section 3020-a of the Education Law. Tenured teachers and other tenured pedagogues must be formally charged and prosecuted under Section 3020-a of the Education Law before they can receive a suspension without pay or termination. The first step is to engage in a Technical Assistance Conference ("TAC") with the Administrative Trials Unit. Attached as Appendix C is a sample TAC form.

If you believe that a tenured pedagogue should be terminated, you should contact your Regional Counsel to arrange for a TAC.

Note: For tenured teachers, consult with your Regional Counsel to commence 3020-a proceedings.

Note: For non-tenured teachers, follow the disciplinary letter writing steps set forth above.

Q: May I terminate a tenured teacher for job abandonment?

A. Yes. According to Article 5F of the Teachers Contract, a teacher who is "absent for 20 consecutive school days without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify." (See Discussion above regarding absences, p. 13.)

2. Terminating Probationary Pedagogues.

Q: How do I know whether a pedagogue is serving probation and when their probationary period is completed?

A: Teachers and other non-supervisory pedagogues serve a three year probationary term following their appointment date. This period is reduced by up to two years for regular service as a substitute prior to their appointment. The personnel office of your Regional Operations Center ("ROC") should submit to each principal a list of all probationary pedagogues and their probationary completion date.

Q: What if a probationary pedagogue works past his or her completion date?

A: Usually, that person becomes tenured automatically. Therefore, if you discover that a probationer who should have been terminated is about to work past his or her probationary completion date, you should remove him or her from the assignment prior to the probationary completion date and contact your Regional Counsel and the Office of Labor Relations.

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~ *Best Practice* ~

Beware of who is receiving tenure!! Principals should ask their Payroll Secretary to keep current data and, when in doubt regarding someone's tenure-eligibility, double-check the service history with your ROC.

Q: How can I extend a pedagogue's probationary period?

A: Only with his/her **written** consent. However, until he or she has agreed, **in writing**, to extend probation, you should proceed with the necessary steps to discontinue or deny completion of probationary service. Contact your Regional Attorney for a stipulation.

~ *Best Practice* ~

Classic Case: In June, employee verbally agrees to extend probation but does not sign a stipulation. The employee returns September 1st as a tenured teacher!

Remember, you must have a written agreement and should continue with the discontinuance process up until you receive a **signed** stipulation from the employee. Contact your Regional Counsel to arrange for the stipulation.

Q: When can a LIS/CSD LIS terminate a probationary pedagogue?

A: Any time prior to their completion date, either in the middle of the term or at the end. This is referred to as either (a) a denial of completion of probation, if it is done at the end of their probationary term; or (b) a discontinuance, if it is done before the end of the probationary term. There is no requirement that you keep a probationary teacher for any particular period of time.

Q: What are sufficient grounds to terminate a probationary pedagogue?

A: Any ground that would constitute a basis for an unsatisfactory rating.

Q: Can I terminate a probationary pedagogue even if s/he received only one observation?

A: Yes.

Q: Must I terminate a probationary pedagogue to whom I gave an unsatisfactory rating?

A: No, although you should discuss with your LIS why you are not recommending discontinuance or denial.

Q: Does an unsatisfactory rating automatically terminate a probationary pedagogue?

A: No. Although grounds for an unsatisfactory rating may also be grounds for a denial or discontinuance, the LIS must also provide specific notification that the pedagogue's probationary term is being discontinued or completion of probation is being denied.

Q: What procedure must be followed for termination of a probationary pedagogue?

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A: In Community School District Schools, the LIS serving as the Community Superintendent must give the employee a 30-day notification for a discontinuance and a 60-day notification for a denial of tenure along with whatever ratings and documentation support the termination. In non-Community School District Schools (e.g. most High Schools and District 75), the LIS responsible for that school sends such notice.

3. Terminating Non-Pedagogues, Parent Coordinators, Paraprofessionals and School Aides.

Q: What are disciplinary options, short of dismissal?

A: Generally, the steps of progressive discipline are as follows:

- Step 1: Letter to the file. (See Discussion above regarding disciplinary letters, p. 26.)
- Step 2: Suspension – with or without pay.
All employees except tenured pedagogues can be suspended without pay by the principal. Tenured Pedagogues must have a 3020-a hearing prior to receiving a suspension without pay. (See Discussion above regarding 3020-a charges, p. 38).
- Step 3: Discontinuance of service/termination.
All employees except tenured pedagogues can be discontinued or terminated by the principal or, for non-tenured pedagogues, the CSD LIS.

Note: The decision to terminate is not based solely on the last act of misconduct rather, it should be based on the last act *plus* the prior acts of misconduct.

NOTE: These disciplinary steps are entirely dependent on the severity of the problem and the number of occurrences. There may be circumstances when one or more steps are bypassed – for example, unprofessional behavior may warrant immediate suspension without pay or termination whereas absenteeism usually requires a prior written warning. Contact your Regional Counsel or the Director of the Office of Labor Relations for advice.

~ Best Practices ~

Advise employee of disciplinary problem at earliest possible stage; thus, the union cannot claim there was no notice of performance deficiency.

Prior to terminating, review your documents – you should have documents memorializing each step of progressive discipline as well as prior meetings with the employee advising him/her that if the deficiency was not remedied the employee may face termination.

For tenured pedagogues **ALL** disciplinary letters must end with “This incident may lead to further disciplinary action including an unsatisfactory rating and termination.”

Q: Does an employee’s disciplinary history carry over into the next year?

A: Yes. For example, if in June an employee has three disciplinary letters in his/her file regarding particular improper conduct and in the following September s/he continues to engage in the same improper conduct, you should continue with progressive discipline and proceed with suspension or termination (depending on the circumstances and whether the employee is tenured).

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Q: On what grounds can I suspend employees such as paraprofessionals, parent coordinators, school aides and non-tenured pedagogues without pay?

A: A suspension without pay is within your discretion (except for tenured pedagogues) although it may be subject to review by an arbitrator. Generally, it should be used when the employee had first received a written warning regarding the same type of behavior. Of course there are some incidents that are severe enough to require suspension (or termination) as the first disciplinary step.

Q: What is the procedure for suspending a non-tenured pedagogue or non-pedagogue?

A: You should follow the disciplinary letter steps set forth above at p. 26 concluding with suspension.

Note: Contact your Regional Counsel or the Director of the Office of Labor Relations if you are suspending an employee without pay.

Q: When and how can I terminate non-tenured and non-probationary employees?

A: This depends on whether the employee is a school aide, parent coordinator or paraprofessional, or teacher with a Modified Temporary License ("MTL").

- School Aides, Paraprofessionals, and Parent Coordinators: A school aide, paraprofessional or parent coordinator can be terminated for "good and sufficient reason" after you or the LIS give "due consideration to the matter." You should follow the principles of progressive discipline. However, a particular incident can be egregious enough that termination should be the first disciplinary step.

"Due consideration" means that you conducted a fair investigation, giving the employee the opportunity to respond to the evidence prior to making a decision. You should follow the steps outlined for teacher disciplinary letters discussed above with your disciplinary conclusion being termination.

- MTL Teacher: At the end of the term (end of January or end of June), you may decline to rehire an MTL teacher for the following term.

If the MTL has more than a year of satisfactory service in your school, s/he must receive an unsatisfactory rating along with the notification that s/he will not be rehired. Exception: The least senior MTL may lose his or her job because a certified teacher has been hired to fill that position.

For incidents or conditions that put children at risk (e.g., corporal punishment, accidents waiting to happen), the MTL can be terminated by giving the employee a termination letter effective the same day. The termination notice should conform to the requirements above for writing disciplinary letters. See Discussion above regarding disciplinary letters, p. 26-27.

If you wish to terminate an MTL the middle of the term for incompetence, provide 10 days' written notice.

Note: Contact your Regional Counsel or the Director of the Office of Labor Relations if you are terminating or suspending an employee without pay.